

RESOLUTION NO. 75691

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING EXHIBIT B OF RESOLUTION NO. 73587, AS AMENDED, TO PROVIDE AN ADDITIONAL EXTENSION OF UP TO TWELVE (12) MONTHS FOR DEFERRAL OF THE PAYMENT OF PARKLAND FEES CHARGED PURSUANT TO CHAPTERS 14.25 AND 19.38 OF THE SAN JOSE MUNICIPAL CODE FOR HIGHRISE MULTI-FAMILY RESIDENTIAL PROJECTS LOCATED IN THE DOWNTOWN CORE AREA

WHEREAS, City enacted the Parkland Dedication Ordinance, San José Municipal Code ("SJMC") Chapter 19.38 ("PDO") in 1988 and the Park Impact Ordinance, SJMC Chapter 14.25 ("PIO") in 1992 to meet the demand for new neighborhood and community parkland generated by development of new residential subdivisions and new non-subdivided residential projects; and

WHEREAS, on January 9, 2007, City Council adopted Resolution No. 73587 setting forth the Schedule of Parkland In-lieu Fees charged and credits issued pursuant to Chapters 14.25 and 19.38 of the SJMC and reduced and deferred payments of parkland fees for developers of projects containing Downtown Units, as that term is defined in Resolution No. 73587; and

WHEREAS, under Resolution No. 73587, parkland fees for Downtown Units which would otherwise be due and payable to City no later than the issuance of the first building permit for the project were deferred to the date of the scheduling of the final inspection for the first certificate of occupancy for a Downtown Unit, including temporary certificates of occupancy; and

WHEREAS, Resolution No. 73587 has been amended as follows: 1) Resolution No. 73906 amended Exhibit A and the definition of "Projects in Process," 2) Resolution No. 74382 allowed the additional extension of up to eighteen (18) months for payment of parkland fees by developers of projects containing Downtown Units, 3) Resolution No. 75219 retroactively deferred the payment of parkland fees, interest and penalty until January 15, 2011 for residential projects that have an approved parcel or final map and have not been issued a building permit, and 4) Resolution No. 75249 allowed the additional extension of up to thirteen (13) months for payment of parkland fees by developers of projects containing Downtown Units; and

WHEREAS, City Council finds that high-rise multi-family residential projects located in the Downtown Core Area continue to be affected by the economy and the instability of the financial markets, and extending the deferral of the parkland in-lieu fees for up to an

additional twelve (12) months will encourage continued investment in the Downtown Core Area; and

WHEREAS, this Resolution further amends Resolution No. 73587, as amended, to allow the City Manager to enter into amendments with developers that have previously executed agreements with City pursuant to Resolution No. 75249 to extend the deferral of payment of parkland in-lieu fees for up to an additional twelve (12) months (from up to thirty-one (31) to up to forty-three (43) months) as more particularly set forth in this Resolution;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of San José that:

SECTION 1. Section 2.C of Exhibit B ("Deferred Payment") of Resolution No. 73587 is hereby amended as follows:

C. Deferred Payment.

1. Developers of projects containing Downtown Units shall be eligible to defer payment of parkland fees as specified in this Subsection, which would otherwise be due and payable to the City no later than the date of the issuance of the first building permit for the project. The parkland fees shall be due and payable to the City prior to the date of the scheduling of the final inspection for the first certificate of occupancy for a Downtown Unit, for residential occupancy. Certificates of occupancy include temporary certificates of occupancy permits, for residential occupancy.

2. Notwithstanding the preceding Subsection, the City Manager, in consultation with the City of San José Redevelopment Agency Executive Director, may enter into written agreements with developers of projects containing Downtown Units to defer payment of parkland fees for an additional period of time beyond the date of the scheduling of the final inspection for the first certificate of occupancy (including any temporary certificates of occupancy for residential occupancy) for a Downtown Unit if all of the following conditions are met:

a. the City Manager finds that deferred payment of the parkland fees for the duration of the written agreement will not substantially interfere with the construction schedule of any Park Facilities or Recreational Facilities eligible to be funded by the parkland fees proposed to be deferred; and

b. the written agreement requires the developer to pay interest on the deferred parkland fees calculated at the rate earned by the City's investment portfolio during the period between the date on which the developer schedules the final inspection for the first certificate of occupancy for a Downtown Unit, for residential occupancy (including any temporary certificate of occupancy for residential occupancy) and the date on which the developer makes payment of the deferred parkland fees to the City; and

c. the written agreement shall be fully executed by all parties and recorded in the Santa Clara County Recorder's Office against the real property on which the Downtown Units are located; and

d. prior to the City's execution of the written agreement, Developer shall provide the City with certain collateral or security, such as a letter of credit, deed of trust, or other security instrument, for the payment of the deferred parkland fees and estimated interest as acceptable to the City Manager; and

e. the parkland fees and accrued interests shall be due and payable to the City on or before the earlier of any of the following events: (a) eighteen (18) months from the date of the scheduling of the final inspection for the first certificate of occupancy for a Downtown Unit, for residential occupancy (including any temporary certificates of occupancy for residential occupancy); (b) a date determined by the City Manager pursuant to Subsection 2.a above; or (c) the date of the scheduling of the final inspection for the certificate of occupancy (including any temporary certificates of occupancy for residential occupancy) for the last ten percent (10%) of the Downtown Units within the project. In no event will certificates of occupancy (including any temporary certificates of occupancy for residential occupancy) be issued for more than ninety percent (90%) of the Downtown Units contained within a project, unless and until, the parkland fees and accrued interests are fully paid to the City.

3. The provisions of Subsection C.2 shall expire on July 1, 2009. Notwithstanding the expiration date set forth in this Subsection, the City Manager may enter into amendments to written agreements with developers who have previously executed a written agreement with City pursuant to Section C.2 above to defer payment of parkland fees for an additional period of up to twenty-five (25) months from the date of the expiration of the executed agreement if all of the following conditions are met:

a. the City Manager finds that deferred payment of the parkland fees for the additional duration in the amendment will not substantially interfere with the construction schedule of any Park Facilities or Recreational Facilities eligible to be funded by the parkland fees proposed for an additional deferment; and

b. the amendment continues to require the developer to pay interest on the deferred parkland fees calculated at the rate earned by the City's investment portfolio during the period between the date on which the developer schedules the final inspection for the first certificate of occupancy for a Downtown Unit, for residential occupancy (including any temporary certificate of occupancy for residential occupancy) and the date on which the developer makes payment of the deferred parkland fees to the City; and

c. the amendment shall be fully executed by all parties and recorded in the Santa Clara County Recorder's Office against the real property on which the Downtown Units are located on or before March 1, 2011; and

d. prior to the City's execution of the amendment, Developer shall provide the City with certain collateral or security, such as a letter of credit, deed of trust, or other security instrument, for the payment of the deferred parkland fees and estimated interest as acceptable to the City Manager, in addition to any collateral that was previously provided to the City under the executed agreement; and

e. the parkland fees and accrued interests shall be due and payable to the City on or before the earlier of any of the following events: (a) forty-three (43) months from the date of the scheduling of the final inspection for the first certificate of occupancy for a Downtown Unit, for residential occupancy (including any temporary certificates of occupancy for residential occupancy); (b) a date determined by the City Manager pursuant to Subsection 3.a above; or (c) the date of the scheduling of the final inspection for the certificate of occupancy (including any temporary certificates of occupancy for residential occupancy) for the last ten percent (10%) of the Downtown Units within the project. In no event shall certificates of occupancy (including any temporary certificates of occupancy for residential occupancy) be issued for more than ninety percent (90%) of the Downtown Units contained

within a project, unless and until, the in-lieu fees and accrued interests are fully paid to the City; and

f. the amendment shall provide for installment payments as follows: an initial payment by the Developer to the City, simultaneously with the execution of the amendment, an amount sufficient to pay at least the accrued interest on the outstanding parkland fees earned up to February 15, 2011, and thereafter a quarterly payment by the Developer to the City on May 15, 2011 for all residential units sold between February 15, 2011 and May 14, 2011, another quarterly payment by the Developer to the City on August 15, 2011 for all residential units sold during the quarter between May 15, 2011 and August 14, 2011, another quarterly payment by the Developer to the City on November 15, 2011 for all residential units sold during the quarter between August 15, 2011 and November 14, 2011, and with a final balloon payment of all remaining outstanding parkland fees and accrued interest due to the City on or before February 15, 2012.

Nothing stated herein shall effect any agreement executed between the City and developer pursuant to Section C.2 above unless it has been modified in writing between the parties pursuant to this Subsection.

SECTION 2.

This Resolution is effective on the same day it is adopted by City Council. The provisions of Resolution No. 73587, as amended by Resolution Nos. 73906, 74382, 75219, and 75249 that have not been amended by this Resolution shall remain in full force and effect.

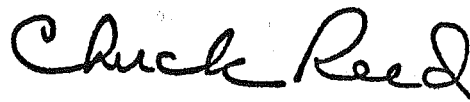
ADOPTED this 11th day of January 2011, by the following vote:

AYES: CAMPOS, CHU, CONSTANT, HERRERA, KALRA, LICCARDO,
NGUYEN, OLIVERIO, ROCHA, PYLE; REED.

NOES: NONE.


ABSENT: NONE.

DISQUALIFIED: NONE.



CHUCK REED
Mayor

ATTEST:


for DENNIS D. HAWKINS, CMC
City Clerk